



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 28, 2004

Mr. Tim G. Sralla
Ms. April M. Virnig
Taylor Olson Adkins Sralla Elam, L.L.P.
6000 Western Place Ste 200
Ft Worth, Texas 76107-4654

OR2004-10853

Dear Mr. Sralla and Ms. Virnig:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 215510.

The City of Richland Hills (the "city"), which you represent, received a request for information pertaining to complaints concerning five specified properties. You claim that some of the requested information is excepted from disclosure pursuant to sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.¹

You claim that the highlighted portions of the information that you submitted to us for review as Exhibit B are excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with the common-law informer's privilege.² We note that the common-law informer's privilege has long been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *see also Hawthorne v. State*, 10

¹ We note that the city did not submit any responsive information to us other than the submitted information. We, therefore, presume that the city has already provided the requestor with all other responsive information to the extent that it existed on the date of the city's receipt of this request. If not, then the city must do so at this time. *See Gov't Code §§ 552.006, .301, .302; see also Open Records Decision No. 664 (2000)* (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).

² Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision and incorporates the common-law informer's privilege. *See Gov't Code § 552.101.*

S.W.2d 724, 725 (Tex. Crim. App. 1928). We further note that the common-law informer's privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer's identity. *See* Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). The common-law informer's privilege also protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." *See* Open Records Decision No. 279 at 2 (1981) (citing Wigmore, Evidence, § 2374, at 767 (McNaughton rev. ed. 1961)). However, the report must be of a violation of a criminal or civil statute carrying a civil or criminal penalty. *See* Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5 (1988). In addition, the privilege excepts an informer's statement only to the extent necessary to protect the informer's identity. *See* Open Records Decision No. 549 at 5 (1990).

You indicate that the individuals with whom this highlighted information is associated reported violations of city ordinances that constitute misdemeanor offenses and carry criminal penalties. You further indicate that these reports were made to the city department that is responsible for enforcing such ordinances. Based on your representations and our review of the highlighted portions of Exhibit B, we find that you have adequately established that the informers' identifying information may be withheld pursuant to section 552.101 of the Government Code in conjunction with the common-law informer's privilege. The city must release the remaining submitted portions of Exhibit B to the requestor.

You claim that the information that you submitted to us for review as Exhibit C is excepted from disclosure pursuant to section 552.108(a)(1) of the Government Code. Section 552.108(a)(1) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why section 552.108 is applicable to that information. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex.1977); Open Records Decision No.434 at 2-3 (1986). You state that Exhibit C is associated with a case that is currently pending prosecution in the city's municipal court. Thus, we agree that section 552.108(a)(1) applies to this information.

We note, however, that section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *See* Gov't Code §552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.— Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 (1976) (summarizing types of basic information that must be made available to public, to include detailed description of offense). Accordingly, we conclude

that with the exception of basic information that must be released to the requestor, the city may withhold Exhibit C pursuant to section 552.108(a)(1) of the Government Code. We note, however, that the city maintains the discretion to release all or part of this information that is not otherwise confidential by law.³ See Gov't Code § 552.007.

In summary, the city may withhold the highlighted portions of Exhibit B pursuant to section 552.101 of the Government Code in conjunction with the common-law informer's privilege. With the exception of the basic information that must be released to the requestor, the city may withhold Exhibit C pursuant to section 552.108(a)(1) of the Government Code. The city must release the remaining submitted portions of Exhibit B to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

³ Because we base our ruling with regard to Exhibit C on section 552.108(a)(1) of the Government Code, we need not address your remaining claimed exception to disclosure, except to note that "basic information" may not generally be withheld under section 552.103 of the Government Code. See Open Records Decision Nos. 597 (1991), 362 (1983).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/krl

Ref: ID# 215510

Enc. Submitted documents

c: Ms. Tracy Wilson
6912 Hardisty Street
Richland Hills, Texas 76118
(w/o enclosures)